IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1975**

No. 75-1651

WILLIAM L. MATHESON, Executor of the Will of Dorothy Gould Burns, Deceased,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

## REPLY MEMORANDUM OF PETITIONER

JOHN S. MARTIN, JR.
MARTIN, OBERMAIER & MORVILLO
1290 Avenue of Americas
New York, New York 10019
*Attorneys for Petitioner*

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1975**

---

No.

---

WILLIAM L. MATHESON, Executor of the Will of Dorothy Gould Burns, Deceased,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

---

## REPLY MEMORANDUM OF PETITIONER

In an attempt to avoid the question whether *Afroyim* v. *Rusk,* 387 U.S. 253, still represents the views of a majority of this Court, the Government states that Mrs. Burns had become a citizen of Mexico by operation of law at the time of her marriage and, thus, was a dual national at the time she applied for a certificate of nationality. This claim is, however, directly contradicted by an official interpretation of the applicable Mexican laws by the Department of Foreign Affairs of Mexico rendered in response to an inquiry from our State Department in connection with this very case. In this memorandum the Mexican Government stated that Mexican law required a woman who married a Mexican national to make application for citizenship in which she renounced any other nationality. The Mexican Government noted in this memorandum that in 1936 Mexico promulgated as a domestic law the Convention of Na-

tionality signed in Montevideo in 1933, which expressly provided that neither matrimony nor its dissolution should affect the nationality of the wife and which provided further that naturalization in Mexico should carry with it the loss of nationality of origin.

Thus, this is not a case of a dual national who simply performs an action consistent with that status. Compare, *Kawukita* v. *United States,* 343 U.S. 717, 723-724; *Jalbuena* v. *Dulles,* 254 F.2d 379 (C.A. 3). In this case Mrs. Burns did not become a Mexican citizen until she filed an application for a certificate of nationality in which she renounced her citizenship of origin. When she performed that act, she lost her United States citizenship under the express terms of the Nationality Act of 1940 and the principles enunciated by this Court in *Savorgnan* v. *United States,* 338 U.S. 491.

The decision below can, therefore, be sustained only on the basis that *Afroyim* v. *Rusk, supra,* overruled *Savorgnan* v. *United States* and that under *Afroyim,* the provisions of the Nationality Act of 1940 at issue here are unconstitutional. As we noted in our main brief the question of the continuing validity of *Afroyim* and the constitutionality of the provision of the Nationality Act at issue here are important questions which merit review by this Court.

## Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN S. MARTIN, JR.
MARTIN, OBERMAIER & MORVILLO
1290 Avenue of the Americas
New York, New York 10019
*Attorneys for Petitioner*